IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7281 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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HARSHABEN RAJESHBHAI PATEL & 3 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR.HARDIK BHARHMBHAT for Applicant(s) : 1 - 4.
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2007

ORAL JUDGMENT

1. Though served nobody appears on behalf of respondent No.2 – original complainant.

2. Rule. Mr.M.R.Mengdey, learned Additional Public Prosecutor waives service of rule on behalf of the respondent – State.

3. By way of this application under Section 482 of the Criminal Procedure Code, the petitioners – original accused Nos. 2 to 5 – relatives of husband – original accused No.1, have prayed for an appropriate order to quash and set aside the FIR dated 17.06.2007 being C.R.No.I- 18/2007 registered with Mahila Police Station, Anand.

Respondent No.2 herein – original complainant – wife of original accused No.1 has filed the aforesaid complaint / FIR with the Mahila Police Station, Anand against the petitioners and original accused No.1 for the offences punishable under Sections 498(A), 406, 323, 506(2), 504, 114 of the Indian Penal Code and Sections 3 and 31 of the Domestic Violence Act, alleging *inter-alia* that she has married with original accused No.1 before five years, that initially there was no dispute and because of wed-lock she has got one son aged about six years, and since very beginning she is residing

with her husband separately. Further in the complaint it is alleged that her husband is in habit of taking liquor and that on 02.06.2007, the husband went to the place where the complainant is running beauty parlor shop, he abused and beaten her and thereafter, as two persons intervened the husband had gone. A general allegations are also made against the petitioners while submitting that they are instigating her husband and encouraging her husband in ill-treating the complainant mentally and physically. Therefore, it is alleged that the petitioners and the original accused No.1 have committed the offences as alleged. Being aggrieved and dissatisfied with the same, the petitioners – original accused Nos. 2 to 5 – relatives of husband who are residing separately have preferred the present application under Section 482 of the Criminal Procedure Code to quash the impugned FIR.

4. Mr. Bramhbhatt, learned Advocate appearing on behalf of the applicants has vehemently submitted that even considering the averments and allegations in the complaint, to be taken on its face value, no case is made out against the petitioners for the

offences punishable under Sections 498(A), 406, 323, 506(2), 504, 114 of the Indian Penal Code and Sections 3 and 31 of the Domestic Violence Act. It is submitted that the main allegations are against original accused No.1 – husband and not only that even in the complaint itself it is specifically mentioned that from the very beginning the complainant and the original accused No.1 – husband are residing separately. It is submitted that to continue the criminal proceedings against the petitioners would be abuse of process of law, therefore, it is requested to quash the aforesaid FIR. As stated above, though served nobody appears on behalf of the respondent No.2 – original complainant meaning thereby there is no opposition to the present application.

5. Mr.M.R.Mengdey, learned Additional Public Prosecutor is not in a position to satisfy the Court that a case is made out against the petitioners for the offences punishable under Sections 498(A), 406, 323, 506(2), 504, 114 of the Indian Penal Code and Sections 3 and 31 of the Domestic Violence Act.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. Considering the complaint / FIR in toto and even considering the averments and allegations in the impugned complaint / FIR on its face value, it cannot be said that any case is made out against the petitioners for the offences punishable under Sections 498(A), 406, 323, 506(2), 504, 114 of the Indian Penal Code and Sections 3 and 31 of the Domestic Violence Act. On considering the averments and allegations in the complaint, it appears to the Court that main allegations are against the original accused No.1 husband. There are general allegations against the petitioners with a view to rope the petitioners in the aforesaid criminal proceedings. Even in the complaint itself, it is the case on behalf of the original complainant that from the very beginning respondent No.2 – original complainant (wife) and original accused No. 1 (husband) are residing separately. Under the circumstances, it appears that all the petitioners are arrayed as accused in the complaint with a view to harass them and merely because they are relatives of the husband.

To continue the criminal proceedings against the petitioners would be abuse of process of law and unnecessary harassment to the petitioners.

8. For the reasons stated above, the application succeeds. The impugned complaint / FIR being C.R.No. I- 18/2007 registered with Mahila Police Station, Anand is hereby quashed and set aside *qua* the petitioners – original accused No. 2 to 5 only. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R.Shah, J.]

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